

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO.: 05 CV10284 (J. D.C.)(M.J. GWG)

JAVIER MATUTE,

Plaintiff,

v.

EAST 24TH GARAGE CORP., a New York
corporation, and ELYSE KREITMAN and
ROY SCHOENBERG, individually,

Defendants.

COMPLAINT

1. Plaintiff JAVIER MATUTE (hereinafter referred to as "Plaintiff"), was an employee of Defendants EAST 24TH GARAGE CORP., and ELYSE KREITMAN and ROY SCHOENBERG individually (collectively referred to as "Defendants"), and brings this action for overtime compensation and other relief under both the Fair Labor Standards Act, as amended, 29 U.S.C. §216(b), and New York Labor Law. Plaintiff performed work as a parking garage attendant and related activities in New York, New York.

2. Defendant corporation is a New York corporation that operates and conducts business in New York, New York, and is within the jurisdiction of this Court.

3. This action is brought to recover from Defendants overtime compensation, liquidated damages, and the costs and reasonable attorney's fees under the provisions of Title 29 U.S.C. §216(b)(the Act).

4. Plaintiff alleges that under the New York Labor Law, Art 6, §§ 190 et seq., and Art. 19, §§ 650 et seq. (collectively “NYLL”), he is entitled to unpaid overtime wages from Defendants for his work beyond 40 hours per week; unpaid spread of hours payments from Defendants for each day he worked more than 10 hours; liquidated damages equal to 25 percent of their unpaid minimum and overtime wages; and attorneys fees and costs.

JURISDICTION AND VENUE

5. Jurisdiction is conferred on this Court by Title 28 U.S.C. §1337 and by Title 29 U.S.C. §216(b). The Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367. At all material times relevant to this action, Defendant corporation was an enterprise covered by the FLSA as defined by 29 U.S.C. §§ 203(r) and 203(s).

6. Venue is proper in the Southern District of New York Pursuant to 28 U.S.C. § 1391(b) and (c).

7. At all times pertinent to this Complaint, Defendants failed to comply with Title 29 U.S.C. §§201-209, in that Plaintiff performed services for Defendants for which no provisions were made by the Defendants to properly pay Plaintiff for those hours worked in excess of forty (40) hours per week during one or more workweeks.

8. In the course of employment with Defendants, Plaintiff was not paid time and one-half of his regular rate of pay for all hours worked in excess of forty (40) hours per workweek during one or more workweeks.

COUNT I
RECOVERY OF OVERTIME COMPENSATION
UNDER FAIR LABOR STANDARDS ACT

9. Plaintiff readopts and realleges all allegations contained in paragraphs 1 through 8 above.

10. Plaintiff is entitled to be paid time and one-half of his regular rate of pay for each hour worked in excess of forty (40) hours per workweek. Plaintiff regularly worked overtime hours.

11. By reason of the said intentional, willful and unlawful acts of Defendants, Plaintiff has suffered damages plus incurred costs and reasonable attorney's fees.

12. As a result of Defendants' willful violation of the Act, Plaintiff is entitled to liquidated damages.

COUNT II
NY MINIMUM WAGE/OVERTIME COMPENSATION

13. Plaintiff alleges and incorporates by reference the allegations in paragraphs 1 through 12 above.

14. At all times relevant to this action, Plaintiff was an employee of Defendants, and Defendants were Plaintiff's employers, as defined by N.Y. Labor Law §§ 2(5), 2(6), 651(5) and 651(6).

15. At all times relevant to this action, the state minimum wage was \$5.15 per hour, and \$6.00 after January 1, 2005, as codified by N.Y. Labor Law § 652(1).

16. Defendants willfully violated Plaintiff's rights by failing to pay Plaintiff overtime compensation at a rate not less than one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek, in violation of the New York Minimum Wage Act and its implementing regulations. N.Y. Labor Law §§ 650 et seq.; 12 NYCRR § 142-2.2.

17. Defendants willfully violated Plaintiff's rights by failing to pay Plaintiff an additional hour of pay at minimum wage for each day he worked more than ten (10) hours, in violation of the New York Minimum Wage Act and its implementing regulations. N.Y. Labor Law §§ 650 et seq.; 12 NYCRR § 142-2.4.

18. Due to Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants his unpaid overtime compensation, unpaid spread of hours compensation, and an additional twenty-five (25) percent as liquidated damages, reasonable attorney's fee, and costs of the action, pursuant to N.Y. Labor Law § 663(1).

WHEREFORE, Plaintiff requests that this Court grant the following relief:

- i. Declare Defendants' conduct complained of herein to be a violation of Plaintiff's rights under the Fair Labor Standards Act and the New York Labor Law;
- ii. Award Plaintiff unpaid overtime compensation due under the Fair Labor Standards Act and an additional equal amount as liquidated damages because of Defendants' willful failure to pay overtime pay, pursuant to 29 U.S.C. § 216;

- iii. Award Plaintiff spread of hours compensation and overtime compensation under the New York Labor Law and an additional 25% as liquidated damages, pursuant to N.Y. Labor Law § 663(1);
- iv. Award Plaintiff prejudgment interest;
- v. Award Plaintiff the costs of this action together with reasonable attorney's fees; and such other and further relief as this court deems necessary and proper.

DATED this 7th day of December 2005.

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SUMMONS & COMPLAINT

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